

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

EDDIE J. SYKES,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. 08-cv-179-JPG
)	
DR. FEINERMAN, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

Plaintiff Eddie Sykes, formerly an inmate in the Menard Correctional Center, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. This case is now before the Court for a preliminary review of the complaint pursuant to 28 U.S.C. § 1915A, which provides:

- (a) **Screening.**– The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
- (b) **Grounds for Dismissal.**– On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint–
 - (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or
 - (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A. An action or claim is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Upon careful review of the complaint and any supporting exhibits, the Court finds it appropriate to exercise its authority under § 1915A; portions of this action are subject to summary dismissal.

Sykes alleges that he suffers from some form of prostrate problem. His symptoms include frequent urination on himself, constipation, vomiting, and severe abdominal pain. He has sought medical treatment for this condition, without relief. His complaint makes specific allegations against Defendants Feinerman, Magdel, Pollion, Criss, Daily, Shirley, and John Doe Nurse, asserting that each has been deliberately indifferent to his medical needs, in violation of his rights under the Eighth Amendment.

A deliberate indifference claim requires both an objectively serious risk of harm and a subjectively culpable state of mind. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005). A deliberate indifference claim premised upon inadequate medical treatment requires, to satisfy the objective element, a medical condition “that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor’s attention.” *Greeno*, 414 F.3d at 653. The subjective component of a deliberate indifference claim requires that the prison official knew of “a substantial risk of harm to the inmate and disregarded the risk.” *Id.*; *Farmer*, 511 U.S. at 834. Mere medical malpractice or a disagreement with a doctor’s medical judgment is not deliberate indifference. *Estelle v. Gamble*, 429 U.S. 97, 107 (1976); *Greeno*, 414 F.3d at 653; *Estate of Cole by Pardue v. Fromm*, 94 F.3d 254, 261 (7th Cir. 1996). Still, a plaintiff’s receipt of some medical care does not automatically defeat a claim of deliberate indifference if a fact finder could infer the treatment was “so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate” a medical condition. *Snipes v. DeTella*, 95 F.3d 586, 592 (7th Cir. 1996) (citation omitted).

Edwards v. Snyder, 478 F.3d 827, 830-31 (7th Cir. 2007). Applying these standards to the allegations in the complaint, the Court is unable to dismiss the claims against Feinerman, Magdel, Pollion, Criss, Daily, Shirley, and John Doe Nurse at this time. See 28 U.S.C. § 1915A.

Sykes also includes C/O Harrington as a defendant, but his only allegation against Harrington is that she told him to put in a sick call request. This is not deliberate indifference; Harrington simply told Sykes to follow the established procedures for seeking medical treatment. Thus, Sykes has failed to state a claim against Harrington, and she will be dismissed from this

action.

Sykes also lists Roger Walker and Donald Hulick as defendants, asserting that they are liable respectively as director and warden for the actions and inactions of the medical staff, but civil rights law “does not establish a system of vicarious responsibility.” *Burks v. Raemisch*, 555 F.3d 592, 593 (7th Cir. 2009), citing *Monell v. New York City Dep’t of Social Services*, 436 U.S. 658 (1978). Accordingly, Walker and Hulick will be dismissed from this action.

Next, Sykes has listed Amy Lang as a defendant in the caption of the complaint, but he makes no allegations against her. Merely invoking the name of a potential defendant is not sufficient to state a claim against that individual. *See Collins v. Kibort*, 143 F.3d 331, 334 (7th Cir. 1998) (“A plaintiff cannot state a claim against a defendant by including the defendant’s name in the caption.”). Thus, Lang will be dismissed from this action with prejudice.

Finally, the Court notes mention of Dr. Shepard in the text of the complaint, but Shepard is not listed as a defendant in either the caption or the jurisdictional portion of the complaint. Therefore, the Court does not consider Shepard to be a party to this action.

SUPPLEMENTAL COMPLAINT

A few months after filing this action, Sykes filed a “corrected amended complaint for writ of mandamus” (Doc. 13). In this pleading, he attempts to add claims regarding unspecified disciplinary actions that have occurred. He also includes more allegations against Hulick and Walker regarding their alleged liability for his medical treatment.

As discussed above, Hulick and Walker are not liable for the actions or inactions of the medical personnel entrusted with the daily decisions regarding an inmate’s medical care. As for the vague statements about disciplinary actions, Sykes provides no information regarding dates, charges,

or punishments. Furthermore, his claims regarding disciplinary actions do not appear to be related to those involving his medical care, and thus cannot be joined in this action. *See George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). Consequently, the allegations in this pleading shall be disregarded.

DISPOSITION

IT IS HEREBY ORDERED that Defendants **HARRINGTON, HULICK, WALKER** and **LANG** are **DISMISSED** from this action with prejudice.

The Clerk is **DIRECTED** to prepare Form 1A (Notice of Lawsuit and Request for Waiver of Service of Summons) and Form 1B (Waiver of Service of Summons) for Defendants **FEINERMAN, MAGDEL, DAILY, POLLION**, and **CRISS**. The Clerk shall forward those forms, USM-285 forms submitted by Plaintiff, and sufficient copies of the complaint to the United States Marshal for service.

The United States Marshal is **DIRECTED**, pursuant to Rule 4(c)(2) of the Federal Rules of Civil Procedure, to serve process on Defendants **FEINERMAN, MAGDEL, DAILY, POLLION**, and **CRISS** in the manner specified by Rule 4(d)(2) of the Federal Rules of Civil Procedure. Process in this case shall consist of the complaint, applicable forms 1A and 1B, and this Memorandum and Order. For purposes of computing the passage of time under Rule 4(d)(2), the Court and all parties will compute time as of the date it is mailed by the Marshal, as noted on the USM-285 form. Service shall not be made on the Unknown (John and Jane Doe) Defendants until such time as Plaintiff has identified them by name on a USM-285 form and in a properly filed amended complaint. Plaintiff is **ADVISED** that it is Plaintiff's responsibility to provide the Court with the names and service addresses for these individuals.

With respect to former employees of Illinois Department of Corrections who no longer can be found at the work address provided by Plaintiff, the Department of Corrections shall furnish the Marshal with the Defendant's last-known address upon issuance of a court order which states that the information shall be used only for purposes of effectuating service (or for proof of service, should a dispute arise) and any documentation of the address shall be retained only by the Marshal. Address information obtained from I.D.O.C. pursuant to this order shall not be maintained in the court file, nor disclosed by the Marshal.

The United States Marshal shall file returned waivers of service as well as any requests for waivers of service that are returned as undelivered as soon as they are received. If a waiver of service is not returned by a defendant within **THIRTY (30) DAYS** from the date of mailing the request for waiver, the United States Marshal shall:

- Request that the Clerk prepare a summons for that defendant who has not yet returned a waiver of service; the Clerk shall then prepare such summons as requested.
- Personally serve process and a copy of this Order upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c).
- Within ten days after personal service is effected, the United States Marshal shall file the return of service for the defendant, along with evidence of any attempts to secure a waiver of service of process and of the costs subsequently incurred in effecting service on said defendant. Said costs shall be enumerated on the USM-285 form and shall include the costs incurred by the Marshal's office for photocopying additional copies of the summons and complaint and for preparing new USM-285 forms, if required. Costs of service will be taxed against the personally served defendant in accordance with the provisions of Federal Rule of Civil Procedure 4(d)(2) unless the defendant shows good cause for such failure.

Plaintiff is **ORDERED** to serve upon defendant or, if appearance has been entered by counsel, upon that attorney, a copy of every further pleading or other document submitted for consideration by this Court. He shall include with the original paper to be filed with the Clerk of

the Court a certificate stating the date that a true and correct copy of any document was mailed to defendant or his counsel. Any paper received by a district judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court.

Defendants are **ORDERED** to timely file an appropriate responsive pleading to the complaint, and shall not waive filing a reply pursuant to 42 U.S.C. § 1997e(g).

Pursuant to Local Rule 72.1(a)(2), this cause is **REFERRED** to a United States Magistrate Judge for further pre-trial proceedings.

Further, this entire matter is hereby **REFERRED** to a United States Magistrate Judge for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral.*

Plaintiff is under a continuing obligation to keep the Clerk and each opposing party informed of any change in his whereabouts. This shall be done in writing and not later than seven (7) days after a transfer or other change in address occurs.

IT IS SO ORDERED.

Dated: May 14, 2009

s/ J. Phil Gilbert

U. S. District Judge